

A 2009/09 Reportable

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH, PRETORIA)**

DELETED - WHICHEVER IS APPLICABLE
(1) REPORTABLE - ~~ESSENTIAL~~
(2) OF INTEREST TO OTHER JUDGES
(3) REVISED.
2009/09

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10/9/2009

TO: MAGISTRATE PHALABORWA
High court ref no. 421
Magistrate serial no. 6/09
Case no. 257/08

In the review matter:

STATE VERSUS PIET LANGA

REVIEW JUDGMENT

LEGODI J,

The accused initially appeared in the Magistrate court, Hoedspruit on a charge of unlawful possession of goods in contravention of section 36 Act of 62 of 1955.

The accused was found guilty as charged and sentenced to two years imprisonment. The accused's previous convictions seem to have played a role in the sentence imposed. The accused was also declared unfit to possess a firearm after the trial court had held a short enquiry in this regard.

However, the trial court in addition to the two years imprisonment, made an order that the accused should attend programmes whilst in prison in not committing crimes of theft,

possession of suspected stolen property and failure to give satisfactory account thereto or receiving property knowing that it had been stolen or be found in possession of suspected stolen property for a period of 12 months.

I then raised a query with the magistrate as follows:

"Is the order to attend programmes not an impediment on correctional services Department, especially with the 12 months period forming part of the order?"

In terms of which provisions can such an order be made".

One can understand the trial court's frustration in the previous convictions of the accused. The accused committed previously and found guilty of similar offences. At one stage, for example, the accused was sentenced to four years imprisonment for house breaking.

It looks like the trial court was frustrated that, the previous jail sentences did not yield anything in the behaviour of the accused. This might be so, however still the trial court cannot dictate what the commissioner should do. The least, what the trial court could have done was to insist on having a probation officer's report, just to have better understanding of the accused for example, why the accused continues committing similar offences and what programs he had previously attended, if any?

The order relating to the attendance of programs ought to be set aside.

Consequently, I would make an order as follows:

1. Conviction and sentence confirmed.
2. Declaration of unfitness to possess a firearm is confirmed.
3. The order that the accused should attend programs whilst in prison is hereby set aside.


M F LEGODI
JUDGE OF THE HIGH COURT

I AGREE


T J RAULINGA
JUDGE OF THE HIGH COURT